

FILED

JUN 24 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATEMENT OF THE CASE

PRELIMINARY INJUNCTION RECONSIDERATION
ORDER (DOC # 22) ATTACHED

HON. CHARLES R. BREYER >

SIR, THIS MOTION IN QUESTION BEFORE YOU TODAY,
IS BEING PRESENTED IN GOOD FAITH. WHEREAS, I'M
BEING PHYSICALLY AND MENTALLY PUNISHED FOR NOTHING?

(IF) THE DEFENDANT(S) SHOULD HAVE A COPY OF
THIS MOTION (SIR) I WILL BE HAPPY TO PAY
THE COST WITH YOUR (CLERK)?

"REASON"

CORCORAN STATE PRISON 3A03 AD-SEG, ONE OF
THE OFFICERS WHO (WORK) HERE IN AD-SEG UNDER L.T. A.
DIAZ, INMATES (HAS) TO GIVE HIM YOUR LEGAL WORK,
AND (HE) TAKES IT TO THE LAW LIBRARY FOR (COPIES)
HIMSELF? (ALL) OFFICIALS GET TO REVIEW IT
BEFORE IT LEAVES THE BLOCK?

THANK YOU VERY MUCH
SIR

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL LYNN WATERS
PLAINTIFF,

NO: C 07-4683 CRB (PR)

V.

ORDER (DOC # 22)

A.W. COOK, et al.,
DEFENDANTS,

HON. CHARLES R. BREYER

REQUEST FOR EMERGENCY
RECONSIDERATION FOR A
PRELIMINARY INJUNCTION,
WHEREAS THE FALSIFIED
128-G OF 4/23/08 TO
TRANSFER PLAINTIFF HAS CLEARLY
RESULTED IN CONDITIONS
THAT (ARE) A SIGNIFICANT OR
ATYPICAL DEPARTURE FROM THE
ORDINARY INSTANCES OF PRISON
LIFE, AND PRODUCTION OF
SAID DOCUMENTS BEFORE RULING.

PLAINTIFF, MICHAEL LYNN WATERS, IN PRO SE, NOW PRESENTS
UNDISPUTED EVIDENCE OF THE 8TH AMENDMENT VIOLATION THAT
CAN'T BE OVERCOME BY "NO" OTHER EVIDENCE, WHICH SET FORTH
FACTS SHOWING BOTH A COMBINATION OF PROBABLE SUCCESS ON THE
MERITS AND THE POSSIBILITY OF IRREPARABLE INJURY, AND SERIOUS
QUESTIONS ARE IN FACT RAISED AND THE BALANCE OF HARDSHIPS
HAS TIPS SHARPLY IN PLAINTIFFS FAVOR HERE AT CORCORAN
STATE PRISON.

1 PLEASE ACKNOWLEDGE THE SAID PRODUCTION OF REQUESTED
2 DOCUMENTS, REPORTS AND PICTURES ARE NOW A PART OF THIS
3 ORDER FROM THE UNITED STATES DISTRICT COURT JUDGE:
4

5 "ORDER"

6 THIS ORDER FROM THE COURT SHALL BE PAID FOR BY THE
7 DEFENDANT'S OR PLAINTIFF, UPON THE CONCLUSION OF THIS
8 EMERGENCY INVESTIGATION. DUE TO THE TRANSFER OF PLAINTIFF
9 TO CORCORAN'S STATE PRISON GENERAL POPULATION.
10

11 (ALL) QUESTIONS, DOCUMENTS, REPORTS, PICTURES, WRITTEN, TYPED
12 OR OTHERWISE - ARE PLACED UNDER THE PENALTY OF PERJURY,
13 OATH AND FALSIFIED DOCUMENTS, (IF) PRESENTED BEFORE ME,
14 SHALL, MUST, WILL, BE PUNISHED FOR THE CRIME IN WHICH IT
15 CARRIES.

16 AN INQUIRY INTO CONDITIONS OF CONFINEMENT BY NECESSITY RELIES
17 ON THE PARTICULAR FACTS OF EACH SITUATION, THE "CIRCUMSTANCES,
18 NATURE, AND DURATION" OF THE CHALLENGED CONDITIONS MUST
19 BE CAREFULLY CONSIDERED. SEE: (JOHNSON V. LEWIS, 217 F.3d. 726,
20 731 (9TH CIR. 2000). WHILE NO SINGLE FACTOR CONTROLS THE OUTCOME
21 OF THESE CASES, THE LENGTH OF EXPOSURE TO THE CONDITIONS IS
22 OFTEN OF PRIME IMPORTANCE.) <

23 WHILE "SUBSTANTIAL DEPRIVATIONS OF SHELTER, FOOD, DRINKING
24 WATER, AND SANITATION" MAY MEET THE STANDARD DESPITE
25 A SHORTER DURATION. (JOHNSON V. LEWIS, 217 F.3d. AT 732, SEE
26 ALSO. (WHITNACK V. DOUGLAS COUNTY, 16 F.3d. 954, 958 (8TH CIR. 1994).
27 (THE LENGTH OF TIME REQUIRED BEFORE A CONSTITUTIONAL VIOLATION
28 IS MADE OUT DECREASES AS THE LEVEL OF FITNESS ENDURED) —

1 INCREASES:

2 EVIDENCE TO BE PRODUCED AND PROVIDED
3 BY WARDEN DERRAL ADAMS,

4 1) MEDICAL RECORDS (COPY) FROM <4/16/08 - 6/11/08>
5 EVIDENCE OF THE (GRANULOMA) LEFT ON PLAINTIFF, MICHAEL
6 LYNN WATERS, RIGHT LITTLE FINGER FROM: 4/18/08 - 6/11/08?

7
8 2) A "PICTURE" OF THE ACTUAL (GRANULOMA) HELD IN THE
9 (A.C.H.) LAB AT CORCORAN STATE PRISON. (OPERATION) DONE ON
10 (6/11/08) AS PLAINTIFF REQUESTED THE (A.C.H.) LAB TO HOLD
11 FOR THE COURTS.

12
13 3) THE DOCUMENTS AND REPORTS AS TO PLAINTIFF NOT BEING
14 ABLE TO RECEIVE HIS PROPERTY - LEGAL MATERIALS, FROM (5/16/08 -
15 6/19/08)

16
17 4) THE DOCUMENTS AND REPORTS OF PLAINTIFF'S, TOOTHBRUSH,
18 TOOTH PASTE, MATTRESS, SHEETS, PILLOW, SOCKS, T-SHIRTS, AND
19 CLEANING PRODUCTS WAS TAKEN FOR (NOT) DOUBLE CELLING IN 3A03
20 AD-SEG? FROM (5/21/08 - 6/19/08) AND COUNTING. (SPOON + CUP)?

21
22 5) THE DOCUMENTS AND REPORTS OF (WHY-NOT) CLEANING PRODUCTS
23 BEING PASSED OUT (ONCE) A WEEK IN 3A03 AD-SEG, BUT ONLY
24 GIVEN (ONCE) ON ARRIVAL AND NOTHING MORE?

25 (A.C.H.). MENTAL HEALTH REPORT/CHART OF (5/2/08 - 5/16/08)
26 6) THE DOCUMENTS AND REPORTS OF PLAINTIFF BEING PLACED IN
27 A.C.H. ON ARRIVAL TO CORCORAN PRISON R+R WHEREAS, OFFICER
28 CORTIZ, FEMALE, REVIEWED PLAINTIFF'S C-FILE AND THEN CLEARLY STATED:

1 OUT LOUD WHILE ESCORTING PLAINTIFF TO SEE THE R.N.'S
 2 PASS THE SAME BALL PEN OFFICER CORTEZ WANTED PLAINTIFF
 3 TO ENTER:

4 I READ YOUR C-FILE! YOU LIKE TO BE IN CUFFS (WATERS)?
 5 YOU NEED TO STOP TELLING ON PEOPLE! DON'T (P.C.) UP DOWN
 6 HERE! WAIT UNTIL YOU GET TO WHERE YOU GOING TO (P.C.)
 7 UP! DON'T DO IT DOWN HERE!

8
 9 7) A WRITTEN OR TYPED STATEMENTS FROM THE (2) R.N.'S
 10 LISTED WHO WAS PROVIDING THE MEDICAL ATTENTION IN HIS
 11 RECORDS ON (5/2/08) IN R/R) WHILE PLAINTIFF AND C/O CORTEZ
 12 WAS HAVING THE HEATED ARGUMENT BEFORE EVERYONE, PRISON'S
 13 AND OFFICIALS?

14
 15 8) DOCUMENTS AND REPORTS (WHY) ANY AND ALL (SPOONS/CUPS)
 16 THAT ARE LEFT BY OTHER INMATE IN THE AD-SEG CELLS
 17 AFTER BEING RELEASED, ARE (NOT) SENT TO THE (3A) KITCHEN
 18 AND PLACED IN THE (WISHER)?

19 BUT, THROWN IN A (MILK CREAT) IN AD-SEG AND PLACED IN
 20 A NEW ARRIVAL (FISH KIT) WITHOUT INFORMING INMATES?

21
 22 9) ANY AND ALL DOCUMENTS/REPORTS "GIVING 3A03 AD-SEG,
 23 OFFICIALS (AUTHORITIES) FROM THE (HEALTH) INSPECTORS (TO)
 24 PLACED USED SPOONS/CUPS IN A MILK CREAT FOR REUSE?

25
 26 10) ANY AND ALL DOCUMENTS/REPORTS ON, TYPED, WRITTEN, RECORDED
 27 MISCONDUCT BY (L.T. A. DIAZ) OF 3A03-AD-SEG, INCLUDING
 28 THE USE OF (2) CANS OF PEPPER STRAY ON THE BLACK INMATE—

1 WHO IS (NAME) ON (5/19/08) HOUSED IN (3A03-123 ^{LOW} AD-SEG)

2
3 II) THE DOCUMENTS/REPORTS OF THE R.N.'S HELPING THE OTHER
4 INMATES WHO CAME IN CONTACT WITH THIS (PEPPER STRAY)
5 AS (PLAINTIFF) MICHAEL WATERS REQUESTED:

6 THAT THE VENTS BE CUT OFF?

7 NO OXYGEN WAS GIVEN AND REFUSED?

8 CAN THE OFFICIALS PROVIDE ANY EVIDENCE THAT (PLAINTIFF'S
9 (FIDANT) SUFFER "BURNING SKIN" AND LUNGS WITH "CONGESTED"
10 BREATHING" AND "TEARING EYES" FOR (30) MINUTES AT MOST?

11
12 WAS THIS USE OF FORCE UNJUSTIFIED, WHEREAS THE SAID
13 INMATE WAS IN A SUICIDE CELL IN 3A03 AD-SEG, WAS CLEARLY
14 ORDERED TO SIT ON HIS BED, WHEN HE COMPLIED, (J.T.A. DIAZ,
15 TOOK OUT HIS PEPPER STRAY AND STRAYED THIS INMATE, AND
16 THEN, RECEIVED ANOTHER CAN OF PEPPER STRAY FROM ANOTHER
17 OFFICER) WHO PLAINTIFF STATES WAS (OFFICER L. ECHEVERRIA)
18 ALSO, OF 3A03 AD-SEG 2ND WATCH,
19 WHILE (J.T.A. DIAZ) WAS LOUDLY STATING: DON'T HANG YOURSELF
20 INMATE! DON'T HANG YOURSELF! CONTINUE TO SPRAY A
21 EMPTYED THE (SECOND CAN), BECAUSE OF TALKING LOUD TO HIMSELF?
22 WHILE (MENTAL HEALTH - DOCTOR ROTH) WAS SEEN BY PLAINTIFF
23 (LAUGHING) WITH SOME OTHER OFFICERS WHILE J.T.A. DIAZ,
24 WAS SPRAYING THIS INMATE?

25 THIS VERY SAME ACTION WITH PEPPER SPRAY
26 TOOK PLACE IN: SEE (DESPAIN V. UPHOFF, 264 F.3d 965,
27 (C.A.10 (WYO.) 2001). (WITH LESS UNJUSTIFIED PEPPER SPRAY)

28 THIS COURT WILL SET THIS ORDER IN ACTION. WHEREAS,

1 PLAINTIFF NOW STATES:

2 I MICHAEL LYNN WATERS, HEREBY CERTIFY, THAT THE FOLLOWING
3 ABOVE AND BELOW IS TRUE AND CORRECT:

4 I FURTHER STATE THAT (IF) THIS COURT IS WILLING AND ANY
5 OF THE OFFICIALS OR STAFF LISTED HERE (STATE) TO THIS
6 COURT THAT: (THEY DIDN'T) DO ANYTHING LISTED HERE:

7 PLAINTIFF REQUEST (A) LIE- DETECTOR TEST
8 PAID FOR BY (HIMSELF)? IF PLAINTIFF PAST,
9 ALL DEFENDANTS WHO TOOK PART TO TRANSFER
10 PLAINTIFF AND HERE, PAY (ALL) COST AND BE (FIRED)
11 FROM (EVER) WORKING FOR CDC/POLICE ENFORCEMENT
12 AGAIN.

13 PLAINTIFF IS DEAL WITH THIS PSYCHOLOGICAL WAR GAME
14 HERE) AND REQUEST A (PICTURE) OF PLAINTIFF'S CELL AND
15 RIGHT HAND] WHERE (GRAND (OMA) WAS REMOVED.

16
17 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
18 IS TRUE AND CORRECT.

19 6/19/08
20 DATED:

Michael Lynn Waters
SIGNATURE

21
22 IT IS SO ORDERED

23
24
25 DATED

CHARLES R. BREYER
UNITED STATES DISTRICT
COURT JUDGE

PRISON OFFICIALS VIOLATE THE EIGHTH AMENDMENT WHEN THEY ACT WITH DELIBERATE INDIFFERENCE TO A PRISON CONDITION THAT EXPOSES A PRISONER TO AN UNREASONABLE RISK OF SERIOUS HARM. (HELLING V. HICKINNEY, 509 U.S. 25, 33 (1993). PRISON OFFICIALS ACT WITH DELIBERATE INDIFFERENCE WHEN THEY IGNORE AN OBVIOUS AND SERIOUS DANGER, FARMER V. BRENNAN, 511 U.S. 825, 835 (1994).

YOU SHOULD NOT BE SUBJECTED TO EXTREME HEAT OR COLD, AND SHOULD BE GIVEN BEDDING AND CLOTHING APPROPRIATE FOR THE TEMPERATURE GASTON V. COUGHLIN, 249 F.3d. 156 (2d CIR. 2001).

SANITATION AND PERSONAL HYGIENE, PRISONERS ARE ENTITLED TO SANITARY TOILET FACILITIES, DESPAIN V. UPHOFF, 264 F.3d. 965 (10TH CIR, 2001) PROPER TRASH PROCEDURES, AND BASIC SUPPLIES SUCH AS TOOTHBRUSHES, TOOTHPASTE, SOAP, SANITARY NAPKINS, RAZORS, AND CLEANING PRODUCTS.

THE BIG QUESTIONS

SHOULD PLAINTIFF BE PUNISHED BY TAKING ALL OF THIS AWAY FROM HIM, INCLUDING HIS MATTRESS, LEGAL WORK, CIVIL ACTION EVIDENCE BECAUSE OF HIM NOT DOUBLE CELLING?

DOES PLAINTIFF HAVE A RIGHT TO PRESENT HIS MENTAL HEALTH EVIDENCE PROVIDED BY THE ATTORNEY GENERAL'S OFFICE THAT HE WAS GRANTED A SINGLE CELL STATUS?

ALSO, 3161: TITLE 15 INMATE-OWNED LEGAL MATERIALS, TITLE 15, SECTION 3160 INMATES ACCESS TO COURTS (a) STAFF SHALL NOT IN ANY WAY RETALIATE AGAINST OR DISCIPLINE ANY INMATE FOR INITIATING OR MAINTAINING A LAWSUIT.

PLAINTIFF, WILL NOT BE RESPONSIBLE FOR HIS OWN HARM OR DEATH, SHOULD HE?

CONCLUSION

RESPECTFULLY SUBMITTED

6/20/08
DATED:

MICHAEL LYNN WATERS

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare the following:

I am over 18 years of age, and a party to the within action.

My address is: CORCORAN STATE PRISON
P.O. BOX 3461
CORCORAN, CA 93212

On 6/20/2008, I served a copy of the attached
PRELIMINARY INJUNCTION

On the below-named persons by placing a true copy thereof
in envelope addressed as follows, with first class postage
thereon fully prepaid, and delivering the sealed envelopes,
according to the procedures prescribed for sending legal
mail, to the proper institutional official for deposit
in the United States mail at Corcoran, in the County of
Kings, California.

CLERK OF COURT
U.S. DISTRICT COURTHOUSE
NORTHERN DISTRICT COURT
450 GOLDEN GATE AVENUE
SAN FRANCISCO CA 94102

Executed under penalty of perjury this _____ day of
6/20/08, 200__, at Corcoran, California.

Michael Lynn Waters
DECLARANT

RCORAN STATE PRISON
P.O. BOX 3461

RCORAN, CALIFORNIA

93212

TO: CLERK OF COURT

HON. CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA

94102

SAL MAIL